



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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MEMORANDUM

TO: State Water Control Board Members

FROM: Melanie D. Davenport, Water Division Director

DATE: May 18, 2012

SUBJECT: **Consideration to Designate a Portion of Bull Run as Exceptional State Waters**

Executive Summary

Staff intends to ask the Board at their June 25, 2012 meeting to withdraw the Notice Of Intended Regulatory Action (NOIRA) for a rulemaking to amend the Water Quality Standards regulation to designate a segment of Bull Run as Exceptional State Waters (ESW). At the August 4, 2011 meeting, the Board directed staff to initiate a rulemaking to consider amending section 9 VAC 25-260-30.A.3 of the Water Quality Standards to designate Bull Run as Exceptional State Waters from the confluence of Little Bull Run downstream to the crossing of Interstate 66. Please refer Attachment 1 for a map of the river segment. The rulemaking began as the result of a petition from the National Park Service to designate that portion of Bull Run that runs along and through Manassas National Battlefield Park.

A NOIRA was published November 11, 2011 and the comment period closed January 3, 2012. Comments were received from Fairfax County, Luck Stone Co., and VA Dept. of Transportation. All opposed the designation primarily due to impacts the designation would potentially have on storm water permits related to highway construction in the watershed and also due to uncertainty of impacts to upstream activities that may have the potential to degrade water quality. Please refer to Attachment 2 for a summary of comments.

Subsequent to the close of the comment period, a letter was received from the National Park Service expressing their desire to withdraw the petition to designate. The letter is provided as Attachment 3.

Background

By letter dated January 25, 2011, DEQ staff received a petition from the National Park Service to designate that portion of Bull Run that runs along and through Manassas National Battlefield Park as Exceptional State Waters. At the August 4, 2011 meeting of the State Water Control Board, staff was instructed to initiate a rulemaking to consider amending section 9 VAC 25-260-30.A.3 of the Water Quality Standards to designate Bull Run from the confluence of Little Bull Run downstream to the crossing of Interstate 66 as Exceptional State Waters (ESW).

Exceptional State Waters are those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. Equivalent regulatory terms are “Tier 3” and “Outstanding National Resource Waters” for EPA. Bull Run is a relatively small Piedmont river in northern Virginia located approximately 20 miles southwest of Washington, DC and is in the Occoquan watershed portion of the Potomac River basin. The nominated segment is bordered by Fairfax County to the northeast and Prince William County to the southwest.

A NOIRA was published with a comment period from November 11, 2011 to January 3, 2012. The NOIRA stated that a Regulatory Advisory Panel (Panel) would be used to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. The Panel, composed of potentially impacted localities, the petitioner (Park Service), and other interested parties, met on March 7, 2012.

Summary of Comments

Written comments were received from Fairfax County, Luck Stone Co., and VA Department of Transportation (VDOT). All commenters expressed concern regarding potential negative impacts to future transportation improvements. Though still in the early stages of planning, a Route 234 Bypass, Manassas Battlefield Bypass, Route 29 Alternate, and possible addition of extra lanes to I-66 were mentioned as potential projects that could be affected by the Tier 3 designation. Any of these projects may result in new or expanded MS4 storm water discharges which would be prohibited to waters designated as ESW. The proposed Bypass around the Park is wanted and supported by the Park Service, Prince William, and Fairfax Counties and there is a general desire to not jeopardize the ability to pursue this, nor limit the flexibility needed by VDOT and the Counties to deal with storm water runoff controls and management associated with this potential bridge construction. Concern was also expressed regarding strengthening storm water control regulation and the potentiality of unknown impacts an ESW designation may have for a facility’s discharge. The suitability of the nominated portion of Bull Run with regard to meeting the eligibility requirements necessary to be considered for ESW designation was also questioned and there was no indication that Bull Run contains an exceptional aquatic life community.

No citizen comment was received. A full summary of the comments received is provided as an attachment to this memo (Attachment 2).

National Park Service Request to Withdraw

A letter dated May 10, 2012 was received from Manassas National Battlefield Park superintendent Ed Clark stating the National Park Service's desire to withdraw the petition to designate. After further evaluation of potential designation impacts and current Park goals, they have decided that an ESW could possibly conflict with current plans. Their intent is to pursue a Virginia Scenic Rivers designation in collaboration with Fairfax, Prince William, and, possibly, other localities. A scenic rivers designation closely mirrors the intent of an ESW and would accomplish recognition of the environmental and cultural importance of Bull Run but without the discharge prohibitions. A copy of the letter is provided as Attachment 3.

Staff Recommendation

After consideration of the transportation infrastructure maintenance impacts, known and potentially unforeseen future impacts to localities and entities, and in light of the National Park Service's recent expressed desire to withdraw the petition, staff will recommend that the Board withdraw the Notice Of Intended Regulatory Action to designate a portion of Bull Run as Exceptional State Waters.

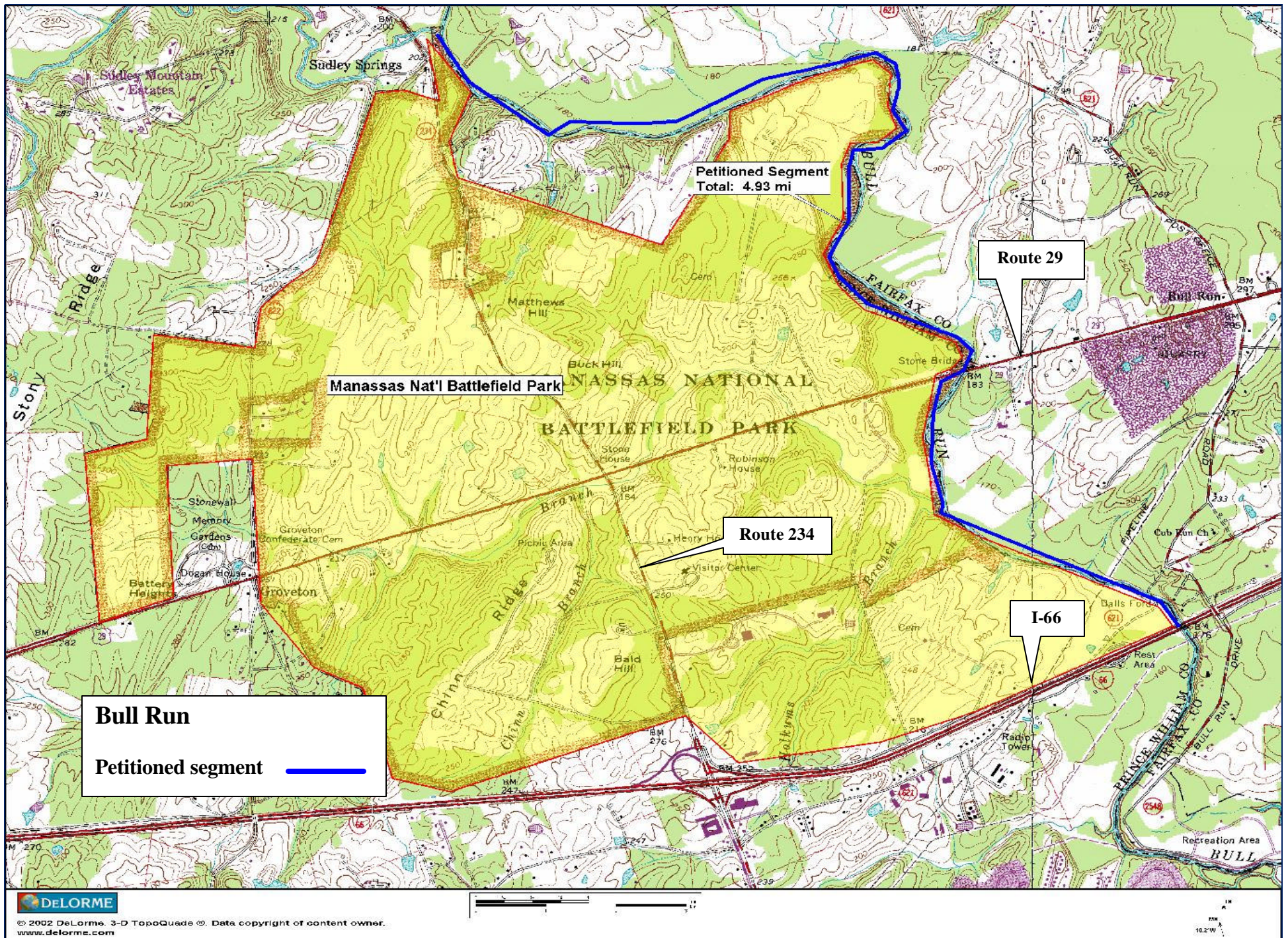
Staff Contact Information

David C. Whitehurst
Phone – 804-698-4121
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Attachments

Attachment 1 – Bull Run map
Attachment 2 – Comment summary
Attachment 3 – May 10, 2012 letter from NPS

ATTACHMENT 1



ATTACHMENT 2

The nominated segment of Bull Run is from the confluence of Little Bull Run downstream to the crossing of Interstate 66.

COMMENT SUMMARY

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| Fairfax County – Dept. Planning & Zoning | They restated their commitment to the protection of the water quality of Bull Run and the Occoquan Reservoir and they regard these waters as critical resources that warrant protection. They feel that comment submitted during the petition phase outlining planning and zoning actions the county has taken attest to their commitment to the protection of these resources. They feel that an ESW designation would have a potential negative effect on transportation projects in the area and that the substantive benefits would be limited given the controls on use activities on parcels in Fairfax Co, adjacent to the segment and only a small area adjacent to the segment in Prince William Co. is outside of the Park. They support the efforts of the National Park Service to highlight the importance of Bull Run however they do not believe an ESW designation is the appropriate mechanism to do this and they recommend against the proposed designation. |
| Luck Companies (Luck Stone) | They fully support efforts to preserve the Commonwealth's natural resources but do not consider it prudent to designate a portion of Bull Run in a heavily developed watershed as an ESW. They state their opinion that the nominated portion of Bull Run does not appear to meet the threshold as defined in the state's Antidegradation Policy. DEQ's initial review of the nomination noted that recreational opportunities exist within the Battlefield Park, but that review did not appear to examine the significant upstream impacts and development of the watershed. The primary tributary to Bull Run, Little Bull Run (or Catharpin Run), flows through and among a variety of housing developments, schools, and at least 4 golf courses. These represent numerous opportunities for upstream storm water runoff from impervious surfaces which would lead to water quality degradation even under the best circumstances. They also expressed concern regarding strengthening storm water control regulation and the potentiality of unknown impacts an ESW designation may have for the facility's discharge. They ask that the localities be allowed to consider all land use options that create a business friendly environment, while continuing planning and zoning activities that protect natural resources. |
| VA Dept. of Transportation (VDOT) | They reaffirmed previously stated concerns regarding impacts of an ESW designation on transportation infrastructure. VDOT is charged with maintenance of 2 major roadways that cross through or immediately adjacent to the petitioned segment of Bull Run, Route 29 and I-66. They are concerned about the potential inability to maintain or improve those roadways due to an ESW designation preventing new or expanded storm water management discharges. They state that VDOT's agency mission is to plan, deliver, operate, and maintain a transportation system that is safe, enables easy movement of people and goods, enhances economy and improves quality of life. An ESW designation would severely inhibit their ability to achieve their mission the Northern Virginia region. They also contend the nominated segment of Bull Run is a typical fourth order Piedmont region stream as opposed to truly "exceptional". |

ATTACHMENT 3



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
Manassas National Battlefield Park
12521 Lee Highway
Manassas, Virginia 20109-2005

May 10, 2012

David C. Whitehurst
Dept. Environmental Quality
PO Box 1105
Richmond, VA 23218

Mr. Whitehurst:

First I would like to thank you for your time and efforts in helping us explore the designation of Bull Run as an Exceptional State Waterway (ESW). We applied for this designation to further established management and public consideration of the values related to Manassas National Battlefield Park (MNBP). The decisions and abilities of MNBP to continue an emphasis on the health, diversity, and ecological dynamics of one of the most important natural and cultural features within the park seemed well represented through this prestigious nomination, aiding in the ability of the river, the adjacent riparian natural system, and the Chesapeake Bay into which it drains, to continue productive functionality, while being immersed within a continuously urbanizing landscape.

However, upon further evaluation of the designation and current park goals, we have decided to withdraw our nomination. Obtaining the designation now could possibly conflict with current plans and we feel that pursuing a Scenic River designation might be more appropriate. Similar to ESW designation, the Scenic Rivers Program's focus is on enhancing the conservation of scenic rivers and their corridors. However, the program expands beyond that by forging partnerships between citizens, local governments and the state. These partnerships begin in the evaluation phase and continue through and after the designation process. We believe that the protection and partnerships created through this program are better suited to the goals of the park.

Again, thank you for time and efforts during this process.

Sincerely,

Ed W. Clark
Superintendent

